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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/884,191	06/19/2001	Judd Zebersky	GLM-RS5	2821

7590 01/23/2003

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EXAMINER

MILLER, BENA B

ART UNIT

PAPER NUMBER

3712

DATE MAILED: 01/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/884,191

Applicant(s)

ZEBERSKY, JUDD

Examiner

Bena Miller

Art Unit

3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 November 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-60, 62-64, 67-91 and 93-95 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) See Continuation Sheet is/are rejected.
- 7) ☒ Claim(s) 7, 13-15, 23-25, 28, 30-35, 37, 43, 45-58, 69-74, 77, 78, 81-83 and 85-89 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Continuation of Disposition of Claims: Claims rejected are 3-6,8-12,16-22,26,29,36,38-42,44,59,60,62-64,67,68,75,76,79,80,84,90,91 and 93-95.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 3-6, 8, 9, 10, 11, 12, 16, 17, 20-22, 26, 27, 29, 36, 38-42, 44, 59, 60, 62-64, 67, 68, 75, 76, 79, 80, 84 and 90, 91, 93-95 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Gonzalez.

Regarding claims 3, 4, 59, 60, 68, 90 and 91 Gonzalez teaches in figures 1-11 a modular house toy comprising a solid floor (fig.6), a solid ceiling (fig.6), a solid back wall (fig. 6), and an open arch (40) where the back wall connects the floor and ceiling in a first vertical plane and the arch connects the floor to the ceiling in a second vertical plane as seen in figure 1 and figure 6. In as much as applicant claims the back wall and open arch permanently connected to the floor, Gonzalez teaches that the wall and open arch is attached permanently to the floor.

Regarding claims 5 and 67, Gonzalez further teaches floor depressions (60), ceiling depressions (fig.10), wall extensions (24) and arch extensions (65) where the extensions are inserted in the depressions.

Regarding claim 6, Gonzalez further teaches four floor and ceiling depressions, two upper wall extensions, two upper arch extensions, two lower arch extensions where the extensions are inserted in the depressions as shown in figure 6.

Regarding claim 9, Gonzalez further teaches a square shape floor in figure 6.

Regarding claim 10, Gonzalez further teaches four top side corners of the floor depression as seen figure 6.

Regarding claims 11, 21 and 29, Gonzalez further teaches that the floor and ceiling has a top side and four side walls formed with the top side as seen in figure 7.

Regarding claims 12, 16, 22 and 27, Gonzalez further teaches that the floor and ceiling having four side wall where the walls have a cavity and a projection staggered around the four sides of the wall as seen in marked up copy figure 6.

Regarding claim 20, Gonzalez further teaches the ceiling having four bottom side corners where one of the depressions is disposed therein in figure 7.

Regarding claim 26, Gonzalez further teaches that floor and ceiling depressions are identical as seen in figure 6.

Regarding claim 41, Gonzalez further teaches an upside down U shaped arch in figure 6.

Regarding claim 44, Gonzalez further teaches a post (24 and 20 formed together as seen in figure 6) with a bore (the arch space formed between 24 and 20 as seen in figure 6).

Regarding claims 8, 17, 38 and 42, Gonzalez further teaches a one-piece injection molded arch, back wall and ceiling as seen in figure 6 and 11.

Regarding claims 62-64 and 93-95, as best understood, Gonzalez teaches in the figures a modular toy house comprising a solid floor with depressions (fig.6), a solid ceiling with depressions (fig.6), a solid back wall and an open arch with extensions where the extensions are inserted within the depression as seen in figure 6.

Regarding claim 75, Gonzalez further teaches a plurality of fixed supporting structures removably connected to another plurality of fixed supporting structures (see marked copy (fig. 11)).

Regarding claim 76, Gonzalez further teaches a cube first and second fixed supporting structure as shown in marked up copy of figure 11.

Regarding claims 79, 80 and 84, Gonzalez further teaches that the ceiling has a top side with a connector having a flange and the floor having a bottom side as seen in figures 6 and 11.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18 and 19 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Gonzalez.

Regarding claim 18, Gonzalez fails to teach a square shapes ceiling. Gonzalez teaches in figure 6 a ceiling portion 30 having a particular shape. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a square shape ceiling to the device of Gonzalez for the purpose of providing a different style and/or appearance for the toy house.

Claim 39 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Gonzalez in view of DeCosta.

Gonzalez teaches in the figures most of the elements of the claimed invention. However, Gonzalez fails to teach the back wall having a solid wall. DeCosta teaches a climate controlled doghouse having a horizontally elongated window 18 that is positioned near the upper surface of the wall 16 of the doghouse. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a solid window as taught by DeCosta in the toy of Gonzalez for the purpose of controlling the temperature when the doghouse is too cold or hot.

Allowable Subject Matter

Claims 7, 13-15, 23-25, 28, 30-35, 37, 43, 45-58, 69-74, 77, 78, 81-83 and 85-89 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form **including all of the limitations of the base claim and any intervening claims.**

Response to Arguments

Applicant's arguments filed 11/27/02 have been fully considered but they are not persuasive. In view of the arguments in reference to the prior art of Leake have been considered but are moot in view of the amended claims submitted by applicant. On the other hand, in reference to the arguments that Gonzalez fails to teach the solid floor, ceiling, back wall and the arch opening permanently connecting the floor to the ceiling. Although the prior art recognizes the doghouse being collapsible, one of ordinary skill in the art will be not have been prevented from concluding that the doghouse of Gonzalez could be permanently attached. Therefore, the examiner maintains the rejection as set for above.

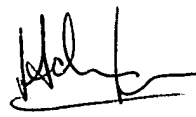
Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 703.305.0643. The examiner can normally be reached on Monday-Friday.

bbm
January 16, 2003



Jacob K. Adams
Primary Examiner